

Remarks

Claims 1, 3, 5, 7, 11, 14, 15, 16, 18, 19, 20, 24 and 35 have been amended. New claim 36 has been added.

Claims 1 and 35

The amendments to claims 1 and 35 define the elastomeric nature of the claimed elastomeric film by adding the features that a 1-inch by 8-inch sample of the elastomeric film (i) has an elastic force of at least 97 psi at 600 seconds following a stretching cycle, said stretching cycle including stretching the sample in the transverse direction to 50% elongation over 12 seconds and returning to 25% elongation over 6 seconds; and (ii) exhibits an elongation of at least 6% following application of an average stress of 1000 psi to the sample for 120 seconds. The claim language describes a “first sample” and a “second sample” to indicate that it is not the same sample of elastomeric film that is subjected to both tests.

Support for the added features to claims 1 and 35 can be found throughout the specification as originally filed. Figures 14, 15, 19 and 20 are representative examples that graphically depict tensile properties of select films that illustrate specific embodiments of the present invention. One of the tests used to determine elastic force is described at paragraphs [0163] to [0166] of the published application. Figures 4 and 5 depict the stretching of a sample of an embodiment of the claimed film using a stretching cycle including stretching in the transverse direction to 50% elongation over 12 seconds and returning to 25% elongation over 6 seconds and measuring elastic force (in “lbf”) at various times. The measured elastic force in “lbf” is converted to “psi” by dividing the measured elastic force by the thickness of the tested film (4 mil) and multiplying by 1000. The test used to determine percent elongation is described at paragraphs [0158] to [0162] of the published application (and depicted in Figure 3) as subjecting a sample of the film to an average stress of 1000 psi and then taking measurements at various times, including at 120 seconds.

Specific support for a film that exhibits an elongation of at least 6% following application of an average stress of 1000 psi for 120 seconds can be found, *inter alia*, in film 7C (as depicted in Figures 15 and 20: elongation \cong 6% and elastic force \cong 375 psi). Specific support for a film

that has an elastic force of at least 97 psi following stretching to 50% elongation can be found, *inter alia*, in film 3E (as depicted in Figures 15 and 20: elongation \cong 48% and elastic force \cong 97 psi)). Applicants therefore submit that no new matter has been added by the amendments to claims 1 and 35.

Claim 36

New claim 36 recites an elastomeric film having the features of the film of claim 1 together with the added feature that the anti-skid additive does not induce lensing or micro-perforation formation in the elastomeric film both during formation and use of the film. Representative support for the subject matter of new claim 36 can be found as described above in relation to amended claims 1 and 35. Representative support for the additional feature recited in new claim 36 can be found in previously cancelled claim 34 and in Applicants' published specification at, *inter alia*, paragraph [0054]. Additional support can be found in Example II, wherein Applicants have provided data demonstrating the mechanical properties of select elastomeric films representing particular embodiments of the present invention. This data clearly shows that incorporation of an anti-skid additive possessing the claimed properties did not induce lensing or micro-perforation formation either during formation or use of the films. Applicants therefore submit that no new matter has been added by the addition of claim 36.

Additional claim amendments

Additional amendments have been made to claims 1, 3, 5, 7, 11, 14, 15, 16, 18, 19, 20, 24 and 35 in order to more clearly define the claimed subject matter. In particular, these claims have been amended to clarify the incorporation of the recited components in at least one of the recited one or more layers of the film. Applicants submit that these amendments are fully supported throughout the application as originally filed and that no new matter has been added by these amendments.

1. Summary of Examiner Interviews

Applicants and the undersigned gratefully acknowledge Examiner Hon's participation in

an interview on February 27, 2007 at the U.S. Patent Office with the undersigned, Stephanie White, Roger Tambay, Julien Lefebvre and Nassar Ahmad (representing the Supervisor Patent Examiner) to discuss the patentability of the pending claims. Applicants acknowledge receipt of the resulting Examiner Interview Summary document that was generated by the Examiner. During the interview, it was agreed that the claims would be amended to define the recited elastomeric films in terms of their elastomeric properties.

The undersigned also appreciates the Examiner's willingness to consider the two proposed claims that were faxed to the Examiner as well as the subsequent telephonic interviews of March 28, 2007 and April 17, 2007, which also included the undersigned and Stephanie White. During the telephonic interviews, the proposed claims and their exemplary support in the specification were discussed in detail. It was agreed that the Applicants would provide color copies of the more relevant as-filed figures and a copy of the tabulated data used in the preparation of Figures 14, 15, 19 and 20. Accordingly, the requested color copies of Figures 14, 15, 19 and 20 are submitted herewith for review purposes only together with a copy of the tabulated data used in preparation of these particular figures.

During the telephonic interview of April 17, 2007, three additional references (*i.e.*, U.S. Patent Nos. 5,194,113 and 5,401,560, and U.S. Patent Application Publication No. 2003/0070579) cited by the Examiner were discussed.

2. Rejections under 35 U.S.C. § 102

Claims 1 – 3, 20 – 22 and 35 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent No. 6,579,607 to Gozukara *et al.* (“Gozukara”) as evidenced by U.S. Patent No. 5,236,483 to Miyashita *et al.* (“Miyashita”).

The Examiner relies on Gozukara to describe a film comprising at least one layer and having a total thickness of 1.2 mil (30 microns), wherein at least one layer of the film comprises 2% by weight of particles that are within the claimed range of about 0.1 to 10% by weight, and wherein the particles have a particle size within the Applicants' claimed range of between 50 and 500 microns. The Examiner has suggested that Gozukara teaches an elastomeric film since the

film of Gozukara can be prepared using a combination of LDPE and LLDPE.

The Examiner relies on Miyashita to demonstrate that the melting point of glass, which is suggested in Gozukara as a possible particle type for incorporation of the films, is within the range of melting points recited in the present claims.

In responding to the above-summarized rejection, Applicants submit that Gozukara relates to controlled permeability films, and in particular, to controlled permeability films for use in the storage of products that are affected by the presence of gases such as oxygen and carbon dioxide. The controlled permeability films of Gozukara are single or multilayer films that contain a non-porous inert filler having a particle size greater than the intrinsic film thickness and that are “activated” to adjust the film permeability characteristics.

Nothing in Gozukara teaches or suggests the successful incorporation of an anti-skid additive into an elastomeric film having the features as recited in Applicants’ amended claims 1 and 35 or new claim 36. In fact, contrary to the Examiner’s suggestion, Applicants respectfully submit that the films taught by Gozukara are not elastomeric. As taught by Gozukara, the described controlled permeability films are activated or treated using pressure, with or without heat, in order to achieve desired film permeability characteristics. Gozukara acknowledges that this pressure treatment “alters or thins the film thickness surrounding the particles and this event results in increased gas transmission rates” (column 8, lines 9 – 11 of Gozukara). If the films taught by Gozukara were indeed elastomeric, then the described alteration or thinning of the film thickness due to pressure treatment would not be permanent. A characteristic of an elastomeric film is that it can be stretched and return to its original shape. Accordingly, an elastomeric film would not be suitable for the purposes taught by Gozukara.

Moreover, the films taught by Gozukara are described as having properties of clarity, stiffness and crinkle feel (see, *e.g.*, column 3, lines 1 – 2; column 4, lines 56 – 67; and column 12, lines 34 – 35 of Gozukara). The elastomeric films as defined in Applicants’ presently amended claims do not exhibit the properties of clarity, stiffness and crinkle feel.

Illustrative of the fact that Gozukara does not disclose elastomeric films as defined by Applicants’ amended claims is the data provided in Examples 1 – 6 of Gozukara which

demonstrate that the films of Gozukara would not (i) have an elastic force of at least 97 psi at 600 seconds following a stretching cycle, said stretching cycle including stretching a 1-inch x 8-inch sample of the film in the transverse direction to 50% elongation at a velocity of 20 inch/min and returning to 25% elongation, or (ii) exhibit an elongation of at least 6% following application of an average stress of 1000 psi to a 1-inch x 8-inch sample of the film for 120 seconds.

At least for the above-discussed reasons, Applicants submit that Gozukara neither teaches nor suggests an elastomeric film having the features defined in Applicants' claims. In particular, Gozukara, either alone or in combination with Miyashita, does not teach or suggest the successful incorporation of an anti-skid additive into an elastomeric film that retains the tensile properties recited in the Applicants' claims. Accordingly, Applicants respectfully request that this rejection be withdrawn.

3. Rejections under 35 U.S.C. § 103(a)

A. Gozukara as evidenced by Miyashita

Claims 7, 8, 10 and 24 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gozukara, as evidenced by Miyashita, as applied to claims 1 – 3, 20 – 22 and 35.

Claims 7, 8, 10 and 24 depend directly or indirectly from independent claim 1. For at least the reasons discussed above in section 2, Applicants submit that Gozukara does not teach or suggest Applicants' claimed elastomeric film and that a person of ordinary skill in the art would not be motivated to alter the properties of the Gozukara films with a reasonable expectation of success. In fact, as stated in section 2, Applicants believe that Gozukara actually teaches away from the preparation and use of elastomeric films. Miyashita cannot remedy the defects present in Gozukara. Therefore, Applicants respectfully request that the rejection of claims 7, 8, 10 and 24 over Gozukara as evidenced by Miyashita be withdrawn.

B. Gozukara as evidenced by Miyashita, and further in view of Lefebvre

Claims 4 – 6, 11 – 15 and 30 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gozukara, as evidenced by Miyashita as applied to claims 1 – 3, 7, 8, 10, 20 – 22, 24 and 35, and further in view of U.S. Patent No. 5,732,745 to Lefebvre *et al.* (“Lefebvre”).

The Examiner has relied on Lefebvre for teaching that an elastomeric film having Applicants’ claimed characteristics, albeit without an anti-skid additive, was known as of the filing date of the subject application.

Claims 4 – 6, 11 – 15 and 30 depend directly or indirectly from independent claim 1. For at least the reasons discussed above in section 2, Applicants submit that Gozukara, as the primary reference, does not teach or suggest Applicants’ claimed elastomeric film and that a person of ordinary skill in the art would not be motivated to alter the properties of the Gozukara films with a reasonable expectation of success. In fact, as stated in section 2, Applicants believe that Gozukara actually teaches away from the preparation and use of elastomeric films. Neither Miyashita nor Lefebvre can remedy the defects present in Gozukara at least for the reason that they do not teach or suggest an elastomeric film containing anti-skid particles as claimed by Applicants. Therefore, Applicants respectfully request that the rejection of claims 4 – 6, 11 – 15 and 30 over Gozukara as evidenced by Miyashita and further in view of Lefebvre be withdrawn.

C. Gozukara as evidenced by Miyashita, and further in view of Erderly

Claim 9 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gozukara, as evidenced by Miyashita as applied to claims 1 – 3, 7, 8, 10, 20 – 22, 24 and 35, and further in view of U.S. Patent No. 5,451,450 to Erderly *et al.* (“Erderly”).

The Examiner has relied on Erderly for teaching that a polyolefin plastomer having a density of 0.910 g/cm³ was known as of the filing date of the subject application and could be prepared using Zeigler-Natta catalysis.

Claim 9 depends indirectly from independent claim 1. For at least the reasons discussed above in section 2, Applicants submit that Gozukara, as the primary reference, does not teach or suggest Applicants’ claimed elastomeric film and that a person of ordinary skill in the art would

not be motivated to alter the properties of the Gozukara films with a reasonable expectation of success. In fact, as stated in section 2, Applicants believe that Gozukara actually teaches away from the preparation and use of elastomeric films. Neither Miyashita nor Erderly can remedy the defects present in Gozukara at least for the reason that they do not teach or suggest an elastomeric film containing anti-skid particles as claimed by Applicants. Therefore, Applicants respectfully request that the rejection of claim 9 over Gozukara as evidenced by Miyashita and further in view of Erderly be withdrawn.

D. Gozukara as evidenced by Miyashita, and further in view of Falla

Claims 16 – 19 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gozukara, as evidenced by Miyashita as applied to claims 1 – 3, 7, 8, 10, 20 – 22, 24 and 35, and further in view of U.S. Patent No. 5,879,768 to Falla *et al.* (“Falla”).

The Examiner relies on Falla to teach that a low density polyethylene having a density of about 0.916 to about 0.930 g/cm³, and a melt index of about 0.1 to about 10g/10 min was known, as of the filing date of the subject application, to be useful in the preparation of films.

Claims 16 – 19 depend directly or indirectly from independent claim 1. For at least the reasons discussed above in section 2, Applicants submit that Gozukara, as the primary reference, does not teach or suggest Applicants’ claimed elastomeric film and that a person of ordinary skill in the art would not be motivated to alter the properties of the Gozukara films with a reasonable expectation of success. In fact, as stated in section 2, Applicants believe that Gozukara actually teaches away from the preparation and use of elastomeric films. Neither Miyashita nor Falla can remedy the defects present in Gozukara at least for the reason that they do not teach or suggest an elastomeric film containing anti-skid particles as claimed by Applicants. Therefore, Applicants respectfully request that the rejection of claims 16 – 19 over Gozukara as evidenced by Miyashita and further in view of Falla be withdrawn.

E. Gozukara as evidenced by Miyashita, and further in view of Karaiwa

Claim 23 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gozukara, as evidenced by Miyashita as applied to claims 1 – 3, 7, 8, 10, 20 – 22, 24 and 35, and further in view of U.S. Patent No. 6,706,385 to Karaiwa (“Karaiwa”).

The Examiner has relied on Karaiwa to teach that an ultrahigh molecular weight polyethylene is equivalent to glass for the purpose of utilizing the physical properties of the ultrahigh molecular weight polyethylene in providing a suitable anti-skid particle with a diameter of 1 to 100 microns.

Claim 23 depends directly from independent claim 1. For at least the reasons discussed above in section 2, Applicants submit that Gozukara, as the primary reference, does not teach or suggest Applicants’ claimed elastomeric film and that a person of ordinary skill in the art would not be motivated to alter the properties of the Gozukara films with a reasonable expectation of success. In fact, as stated in section 2, Applicants believe that Gozukara actually teaches away from the preparation and use of elastomeric films. Neither Miyashita nor Karaiwa can remedy the defects present in Gozukara at least for the reason that they do not teach or suggest an elastomeric film containing anti-skid particles as claimed by Applicants. Therefore, Applicants respectfully request that the rejection of claim 23 over Gozukara as evidenced by Miyashita and further in view of Karaiwa be withdrawn.

F. Gozukara as evidenced by Miyashita, and further in view of Anthony

Claims 25 and 29 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gozukara, as evidenced by Miyashita as applied to claims 1 – 3, 7, 8, 10, 20 – 22, 24 and 35, and further in view of U.S. Patent No. 4,399,173 to Anthony *et al.* (“Anthony”).

The Examiner has acknowledged that Gozukara, as evidenced by Miyashita, fails to teach a film that consists of three layers – an inside layer, a core layer and an outside layer – but relies on Anthony for this teaching.

Claims 25 and 29 depend directly or indirectly from independent claim 1. For at least the reasons discussed above in section 2, Applicants submit that Gozukara, as the primary reference,

does not teach or suggest Applicants' claimed elastomeric film and that a person of ordinary skill in the art would not be motivated to alter the properties of the Gozukara films with a reasonable expectation of success. In fact, as stated in section 2, Applicants believe that Gozukara actually teaches away from the preparation and use of elastomeric films. Neither Miyashita nor Anthony can remedy the defects present in Gozukara at least for the reason that they do not teach or suggest an elastomeric film containing anti-skid particles as claimed by Applicants. Therefore, Applicants respectfully request that the rejection of claims 25 and 29 over Gozukara as evidenced by Miyashita and further in view of Anthony be withdrawn.

G. Gozukara as evidenced by Miyashita, and further in view of Erickson

Claims 30 – 32 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gozukara, as evidenced by Miyashita as applied to claims 1 – 3, 7, 8, 10, 20 – 22, 24 and 35, and further in view of U.S. Patent No. 4,954,124 to Erickson *et al.* ("Erickson").

The Examiner has asserted that it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have formed the elastomeric film of Gozukara, as evidenced by Miyashita, into a gusseted film bag, using the design of Erickson, in order to provide a packaging film bag which is capable of standing up by itself before, during and after being filled, as taught by Erickson.

Claims 30 – 32 depend directly or indirectly from independent claim 1. For at least the reasons discussed above in section 2, Applicants submit that Gozukara, as the primary reference, does not teach or suggest Applicants' claimed elastomeric film and that a person of ordinary skill in the art would not be motivated to alter the properties of the Gozukara films with a reasonable expectation of success. In fact, as stated in section 2, Applicants believe that Gozukara actually teaches away from the preparation and use of elastomeric films. Neither Miyashita nor Erickson can remedy the defects present in Gozukara at least for the reason that they do not teach or suggest an elastomeric film containing anti-skid particles as claimed by Applicants. Therefore, Applicants respectfully request that the rejection of claims 30 – 32 over Gozukara as evidenced by Miyashita and further in view of Erickson be withdrawn.

4. **Allowable Claim**

Applicants note that claim 26 has been deemed allowable by the Examiner if rewritten as an independent claim to include the limitation of the base claim and all intervening claims.

5. **Newly Identified References**

The Examiner has identified the following three new references as being potentially pertinent to Applicants' claims: U.S. Patent Nos. 5,194,113 to Lasch *et al.* ("Lasch") and 5,401,560 to Williams ("Williams") and U.S. Patent Application Publication No. 2003/0070579 to Hong *et al.* ("Hong").

A. Lasch

Applicants believe that Applicants' claimed invention can be distinguished from Lasch for at least the following reasons:

Lasch is directed to thermoplastic marking sheets that optionally include skid-resistant particles. The disclosed thermoplastic marking sheets were developed to overcome a prior problem associated with the "nonconformant or elastic nature of some tapes" which can "result in a tendency toward recovery of initial shape after the tape has been deformed by tamping during application" and, consequently, detachment of the tape from the surface if the tendency to recover exceeds the adhesive force (see, *e.g.*, column 1, lines 34 – 39 of Lasch). The thermoplastic marking sheets of Lasch address this problem by being "conformable" (*i.e.*, non-elastomeric). Thus, Lasch does not teach or suggest Applicants' claimed elastomeric film and actually teaches away from the present invention. Accordingly, Lasch cannot anticipate or render obvious Applicants' claimed invention.

B. Williams

Applicants believe that the claimed invention can be distinguished from Williams for at least the following reasons:

Williams is directed to non-slip laminatable materials prepared by coating a polymer

sheet backing with mineral particles adhered to the backing by a radiation curable adhesive. The described materials are designed to be “severely deformed or “shaped” to permit substantially the full surface areas thereof to come into surface-to-surface contact with the complex surface configurations of a substrate material (see, *e.g.*, column 3, lines 15 – 29 of Williams). The fact that the laminatable materials must have the capability of deformation or “shaping” necessarily requires that the deformations to the materials be permanent - otherwise, the materials would retract from the substrate material. Accordingly, Applicants assert that Williams also teaches away from the present invention by teaching non-elastomeric materials. Accordingly, Williams cannot anticipate or render obvious Applicants’ claimed invention.

C. Hong

Applicants believe that the claimed invention can be distinguished from Hong for at least the following reasons:

Hong is directed to a cold stick pavement marking construction that includes a flexible top layer and a lower adhesive layer. The top layer optionally includes skid resistant particles, however, the skid resistant particles are present at an amount of greater than 30% by weight of the top layer of the marking construction (see, *e.g.*, paragraph [0053] of Hong). In contrast, the Applicants’ claimed film comprises anti-skid particles in the range of about 0.1 to about 10% by weight of the layer of the film. Accordingly, Hong cannot anticipate or render obvious Applicants’ claimed invention.

6. Conclusion

Upon consideration of the foregoing, it will be recognized that Applicants have fully and appropriately responded to all of the Examiner’s rejections. Accordingly, all claims are believed to be in proper form in all respects and a favorable action on the merits is respectfully requested. Should the Examiner feel that there are any issues outstanding after consideration of this amendment, the Examiner is invited to contact Applicants’ undersigned representative to expedite prosecution.

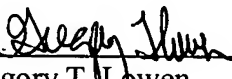
Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or to credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **constructive petition for extension of time** in accordance with 37 C.F.R. 1.136(a)(3).

Dated: **May 15, 2007**

Morgan, Lewis & Bockius LLP
Customer No. **09629**
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: 202-739-3000
Fax: 202-739-3001

Respectfully submitted,

Morgan, Lewis & Bockius LLP



Gregory T. Lowen
Registration No. 46,882
Direct: 202-739-5915